IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6143 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RENUKABEN J PARMAR PROPRIETOR OF SOHAM TRAVELS

Versus

SURAT MAHILA NAGRIK SAHAKARI BANK LTD.

Appearance:

1. Special Civil Application No. 6143 of 2004

MR CB DASTOOR for Petitioner No. 1

MR RAVINDRA SHAH for Respondent No. 1

MRS KANAN R SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 04/10/2004

ORAL JUDGEMENT

#. Rule. Mr.Ravindra Shah waives service of rule on behalf of the respondent. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Gujarat State Cooperative Tribunal ("the Tribunal" for short) dated 28.4.2004 in Appeal No.929 of 2002 in dismissing the same on the ground of delay.

#. Lavad suit came to be filed by the respondent bank with the Board of Nominees, Surat being Lavad Suit No.7 of 1998. The judgment and award came to be passed by the Board of Nominees on 15.12.2001. The petitioner preferred the appeal before the Tribunal, however, there was a delay of 8 months in preferring the said appeal, and, therefore, the application for condonation of delay was submitted by the petitioner. It was submitted in the said application that the husband of the petitioner was suspended and there was CBI raid and she was not keeping good health and that in the month of February 2002 there were riots, and, therefore, requested to condone the delay of 8 months in preferring the appeal. The Tribunal dismissed the said appeal on the ground that the said appeal is barred by limitation and there is no sufficient cause shown by the petitioner for delay. Being aggrieved by the same, the present special civil application has been filed.

#. Mr.Dastoor, learned advocate appearing on behalf of the petitioner, has submitted that considering the reasons given in the application for condonation of delay, the Tribunal ought to have condoned the delay in preferring the appeal. He submitted that, normally the rule is to decide the appeal on merits and not to non-suit any party on the ground of technicality. He further submitted that, in fact, the petitioner is ready and willing to pay the amount which is to be payable on getting the amount from the Criminal Court, which is lying with the Criminal Court and as soon as the petitioner gets the same from the Criminal Court as the husband of the petitioner is already acquitted and the application is already made with the Criminal Court and undertaking to that effect is also filed before this Court.

#. Mr.Shah, learned advocate appearing on behalf of the respondent, has opposed this petition. He tried to support the order passed by the Tribunal. He has submitted that no sufficient cause was shown and the Tribunal was justified in not condoning the delay and dismissing the appeal on the ground of delay.

#. Heard the learned counsel for the respective parties.

#. The judgment and award came to be passed by the Board of Nominees on 15.12.2001. It is not in dispute that the husband of the petitioner was suspended and that there was CBI raid. It is also not in dispute that at the relevant time in the month of February 2002 there were riots in the State of Gujarat and in the city of Surat as well. The Supreme Court and this Court in catena of judgments have held that, normally the case is to be decided on merits rather than on technicality unless it is found that the delay which is caused is deliberate attempt on the part of the party to delay the proceedings ad to get the benefit. This is not the case here. There is a delay of 8 months and the decree is passed against the petitioner. By not filing the appeal within time, the petitioner is not benefitted. Considering the fact that there was delay of 8 months and the decree is passed, the Tribunal ought to have condoned the delay in preferring the appeal. Under the circumstances, the impugned order passed by the Tribunal dated 28.4.2004 in Appeal No.929 of 2002 is hereby quashed and set aside. The appeal is restored to file of the Tribunal. The Tribunal is directed to decide and dispose of the appeal being Appeal No.929 of 2002 afresh on its own merits and in accordance with law. However, the petitioner is directed to pay the amount of Rs.3500/- to the respondent bank by way of costs of this litigation. Mr.Dastoor submitted that the petitioner would file the similar type of undertaking which is filed before this Court to the effect that as soon as the petitioner gets the amount from the Criminal Court, the same will be deposited with the respondent bank. Such undertaking is to be filed before the Tribunal within a period of two weeks from today. It will be open to the respondent bank to move appropriate application for early disposal of the appeal before the Tribunal. As and when such application is made, the Tribunal may consider the same looking to its Board. It is made clear that the property which is already mortgaged with the respondent bank would be continued under the mortgage.

#. This petition is allowed. Rule is made absolute to the aforesaid extent.

(M.R.Shah,J)

(pathan)